



Paper No. 8

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Technology Center 2100

In re Application of: Jay S. Walker et al.)	
Application No.: 09/122,740)	
Filed: July 27, 1998)	DECISION ON PETITION UNDER 37
For: APPLICATION MANAGING)	C.F.R. § 1.181 TO WITHDRAW
METHOD AND INFORMATION)	HOLDING OF ABANDONMENT
PROCESSING APPARATUS USING)	
THE METHOD)	

This is a decision on the Request for Withdrawal of Holding of Abandonment, filed February 22, 2001, pursuant to M.P.E.P. 711.03(c) Section II for Failure to Receive an Office Action; and the supplemental Request for Reconsideration for Holding of Abandonment under MPEP 711.03, filed May 31, 2002.

The communication is treated as a petition under 37 C.F.R. § 1.181 requesting the Withdrawal of the Holding of Abandonment.(See MPEP § 711.03(c)).

This application was held abandoned for failure to file a timely response to the Office action of mail date June 16, 2000. A Notice of Abandonment was mailed on February 8, 2001.

In support of the petition, Petitioner provides statements indicating that the "file (attorney docket number 614.1907) does not contain the Office Action mailed on June 16, 2000" and that the "docketing department" also "looked into the matter and determined that they have no record of receiving an Office Action dated June 16, 2000". In addition, Petitioner provides the Declaration of Victor Del Rio, Manager of the Docketing Department of the firm, and a copy of the patent information printout of all actions relating to this application.

M.P.E.P. § 711.03(c), section II states:

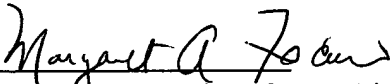
The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month

period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Petitioner has established non-receipt of the Office Action, filed June 16, 2000. In particular, the supplemental petition includes a statement by the practitioner indicating that the Del Rio Declaration shows that "had the Office Action been received and docketed, a due date of three months from the date of the Office Action would have been automatically docketed so that attorneys at the firm would be able to prepare a timely response". As noted in the Del Rio Declaration, "Exhibit A is a copy of a printout of docket entries for the subject application, which reflects that no Office Action dated June 16, 2000 was ever received".

Therefore, the petition is **GRANTED**. The Notice of Abandonment is **WITHDRAWN** and the Office Action will be **REMAILED**.

The application file is being forwarded to the Technology Center support staff for remailing of the Office Action. After processing, the application will then be forwarded to Central Files to await examination in its proper turn based on its new mailing date.



Margaret A. Focarino, Group Director
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